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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Note by the Secretary-General

1. In resolution 1990/33, paragraph 3, of 31 August 1990, entitled "Draft declaration on the protection of all persons from enforced or involuntary disappearances", the Sub-Commission decided to transmit the draft declaration to the Commission on Human Rights for its consideration, with the recommendation that it be endorsed and transmitted to the Economic and Social Council and the General Assembly for final adoption.
2. Attached is the draft declaration adopted by the Sub-Commission. */

*/ Contained in document E/CN.4/Sub.2/1990/32, annex.

DRAFT DECLARATION ON THE PROTECTION OF ALL PERSONS
FROM ENFORCED OR INVOLUNTARY DISAPPEARANCES

Preamble

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Considering that these rights derive from the inherent dignity of the human person,

Bearing in mind the obligation of States under the Charter, in particular, Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support or acquiescence, direct or indirect, of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law,

Considering that enforced or involuntary disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms,

Recalling resolution 33/173 of 20 December 1978, by which the General Assembly expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrow caused by these disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances,

Recalling also the protection afforded to victims of armed conflict by the Geneva Conventions of 12 August 1949 and the Additional Protocols of 1977,

Having regard to Articles 3, 5, 6 and 9 of the Universal Declaration of Human Rights and Articles 6, 7, 9 and 16 of the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard further to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States Parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced or involuntary disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, contained in its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, contained in Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by General Assembly resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced or involuntary disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes the enforced or involuntary disappearance of persons as a specific crime in and of itself, setting forth standards designed to punish and prevent its commission,

Proclaims the present Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance, as a body of principles for all States, for any other public authorities, as well as for organized groups or private individuals acting on behalf of, or with the support or acquiescence, direct or indirect, of States or public authorities,

Urges that all efforts be made so that this Declaration becomes generally known and respected.

Article 1

1. Enforced or involuntary disappearance practised, permitted or tolerated by a Government is an offence to human dignity and shall be condemned as a flagrant and grave violation of the purposes of the Charter of the United Nations and of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Such enforced or involuntary disappearance inflicts severe suffering on the persons subjected thereto, as well as on their families, and places them outside the protection of the law. It violates the rules of international law guaranteeing, inter alia, the right to recognition everywhere as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture. It also violates or constitutes a grave threat to the right to life.

3. The systematized practice of such enforced or involuntary disappearance is a crime against humanity.

Article 2

1. No State shall practice, permit or tolerate enforced or involuntary disappearances.
2. States shall act jointly and in co-operation with the United Nations to contribute by all means to prevent and eradicate enforced or involuntary disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate enforced or involuntary disappearances in any territory under its jurisdiction.

Article 4

Each State shall ensure that all forms of participation in enforced or involuntary disappearance by, or with the acquiescence of, a public official or anyone acting in an official capacity are specific crimes of the gravest kind under its criminal law, including complicity in, incitement to or an attempt to cause enforced or involuntary disappearance.

Article 5

Enforced or involuntary disappearances engage the personal responsibility of their perpetrators as well as the responsibility of the State whose authorities carried out, acquiesced in, or tolerated them.

Article 6

1. No order or instruction of any public authority, civilian, military or other, shall ever justify or be invoked to excuse enforced or involuntary disappearance.
2. Each State shall ensure that orders or instructions directing, ordering, authorizing or encouraging any enforced or involuntary disappearance are explicitly prohibited. Any person receiving such an order or instruction shall have the right and duty not to obey it.
3. Training of law enforcement officials shall emphasize the above provisions.

Article 7

At no time nor in any place whatsoever shall any exceptional circumstances, such as a state or threat of war or other armed conflict or any other public emergency, justify or be invoked to excuse enforced or involuntary disappearance.

Article 8

No State shall expel, return ("refouler") or extradite a person to any State where there are grounds to believe that the person would be in danger of enforced or involuntary disappearance.

Article 9

1. Each State shall ensure under all circumstances, including those referred to in Article 7, the right to an effective judicial remedy, including habeas corpus, as a means of determining the whereabouts or the state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty.

2. In such proceedings, competent authorities, national or international, shall have access to all places holding persons deprived of their liberty and to each part thereof, as well as to any place in which there are grounds to believe that such persons may be found.

Article 10

1. Each State shall ensure that persons deprived of their liberty are held in officially recognized places of detention and are brought before a judicial authority promptly after detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel, anyone designated by them or other persons having a legitimate interest in the information.

2. Each State shall ensure the establishment of an official updated register at each place of detention existing in any territory under its jurisdiction, of all persons deprived of their liberty. Additionally, each State shall, to the extent possible, take steps to establish similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in paragraph 1 above and to any judicial or other competent and independent authority seeking to trace the whereabouts of a detained person.

Article 11

Each State shall ensure that persons deprived of their liberty are released in a manner permitting reliable verification that the persons have actually been released and, further, that they have been released into conditions in which their physical integrity is assured and which enable them to exercise fully the rights to which they are entitled.

Article 12

Each State shall establish rules under its domestic law indicating those officials authorized to order detentions, the conditions under which detention may be ordered, as well as sanctions for those officials who wilfully refuse to provide information on a person's detention. Each State shall likewise ensure strict control, including a clear chain-of-command, over all law enforcement officials and other persons authorized by law to use force and firearms

Article 13

1. Each State shall ensure that anyone having knowledge or a legitimate interest who alleges that a person has been subjected to enforced or involuntary disappearance in any territory under its jurisdiction has the right to complain to a competent and independent authority, and to have the complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced or involuntary disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measures shall be taken to curtail or impede the investigation.
2. Each State shall ensure that the authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.
3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.
4. The findings of such an investigation shall be made available upon request, unless doing so would jeopardize a disappeared person, any other innocent person or an ongoing criminal investigation or trial of an individual who is suspected of responsibility for an enforced or involuntary disappearance.
5. The obligations laid down in this Article are not subject to any limitation of time.

Article 14

Each State shall ensure that, when an individual alleged to have committed an offence referred to in Article 4 is found in any territory under its jurisdiction, that individual shall either be brought before its competent authorities for the purpose of investigation and, where the facts disclosed thereby so warrant, prosecution and trial, or be extradited to any State requesting extradition for the purpose of bringing the individual to justice. This provision shall apply regardless of the individual's nationality or the place where the offence was committed.

Article 15

Enforced or involuntary disappearance shall not be considered a political crime for the purpose of extradition. Participation in enforced or involuntary disappearance shall be treated as being included among extraditable offences in extradition treaties entered into by States.

Article 16

1. No State shall grant asylum or refugee status to individuals who have participated in acts of enforced or involuntary disappearance, regardless of the motives of such participation. However, asylum may be granted to such individuals for the sole purpose of allowing them to be instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to resolve cases of disappearance.

2. Mitigating circumstances may be established in national legislation for individuals who, having participated in enforced or involuntary disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to resolve cases of disappearance.

Article 17

1. Individuals alleged to have committed any of the acts referred to in Article 4 shall be suspended from any official duties during the investigation referred to in Article 13.

2. Such individuals shall be guaranteed fair treatment at all stages of the investigation and eventual prosecution and trial.

3. Penal liability shall be effective independently of any immunities enjoyed by the individuals responsible.

Article 18

The prosecution and punishment of offences of enforced or involuntary disappearance referred to in Article 4 shall not be subject to a statute of limitations.

Article 19

Individuals who have, are alleged to have, or may have committed offences referred to in Article 4 shall not benefit from any amnesty, pardon or other measure that might have the effect of exempting such individuals from criminal responsibility.

Article 20

Each State shall ensure in its legal system that the person subject to an enforced or involuntary disappearance and the person's family obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. In the event of the death of a person as a result of an enforced or involuntary disappearance, the person's family shall be entitled to further compensation.

Article 21

1. States shall prevent and suppress the appropriation of children of parents subjected to enforced or involuntary disappearance and of children born during the mother's deprivation of liberty, and shall devote their efforts to the search, identification and, following a judicial decision, the restitution of the children to their families of origin.

2. States shall provide in their national legislation for the judicial review of the adoption of children referred to in paragraph 1. This judicial review may determine the restitution of the children to their family of origin. States shall also punish the crimes of abduction of children and the alteration and suppression of their true identity.

3. For these purposes, States shall conclude, where appropriate, bilateral or multilateral agreements.

Article 22

Nothing in the present Declaration shall be construed as restricting or derogating from any human right defined in the Universal Declaration of Human Rights or in any other international instrument or as limiting the obligation of States to ensure respect for such rights.
